

## SENATE AMENDMENTS TO SENATE BILL 23

By COMMITTEE ON REVENUE

February 24

- 1 On page 1 of the printed bill, line 4, delete “294.483,” and insert “294.381, 294.483, 295.005,”.
- 2 On page 3, line 22, delete “not”.
- 3 Delete line 23 and insert “tax bonds to finance pension liabilities in an amount that does not
- 4 exceed five percent of the real market value”.
- 5 On page 5, delete lines 17 through 45.
- 6 Delete pages 6 and 7.
- 7 On page 8, delete lines 1 through 31 and insert:
- 8 **“SECTION 5.** ORS 287.025 is amended to read:
- 9 **“287.025. (1) As used in this section:**
- 10 **“(a) ‘Agreement for exchange of interest rates’ or ‘agreement’ means a contract, or an option**
- 11 **or forward commitment to enter into a contract, for the exchange of interest rates that provides for:**
- 12 **“(A) Payments based on levels of or changes in interest rates; or**
- 13 **“(B) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to,**
- 14 **an interest rate floor or cap or an option, put or call.**
- 15 **“(b) ‘Borrowing’ means a bond, note, bond anticipation note, commercial paper, certif-**
- 16 **icate of participation or other agreement made in exercise of the borrowing power of the**
- 17 **issuer.**
- 18 **“(c) ‘Counterparty’ means the entity with which an issuer enters into an agreement for**
- 19 **exchange of interest rates.**
- 20 **“[(b)] (d) ‘Issuer’ means a public body as defined in ORS 288.605[ the] or Oregon Health and**
- 21 **Science University [or the Master Settlement Asset Corporation established in section 3, chapter 2,**
- 22 **Oregon Laws 2002 (fifth special session).]**
- 23 **“[(c) ‘Obligation’ means a bond, note, bond anticipation note, commercial paper, certificate of par-**
- 24 **ticipation or other agreement made in exercise of the borrowing powers of the issuer].**
- 25 **“(e) ‘Related borrowing’ means a borrowing for which the issuer, or the State Treasurer**
- 26 **on behalf of a state issuer, enters into an agreement for exchange of interest rates.**
- 27 **“(f) ‘Termination payment’ means the amount payable under an agreement for exchange**
- 28 **of interest rates by one party to another party as a result of termination, in whole or in part,**
- 29 **of the agreement prior to the expiration of the stated term.**
- 30 **“(2) If the issuer is a state issuer, including the State of Oregon or an agency, department, board**
- 31 **or commission of the State of Oregon, the State Treasurer may exercise the authority granted by**
- 32 **this section on behalf of the state issuer or the state issuer, with the approval of the State Treas-**
- 33 **urer, may exercise that authority directly.**
- 34 **“(3) Subject to subsection (2) of this section, an issuer, or the State Treasurer on behalf of a**
- 35 **state issuer, may enter into an agreement for exchange of interest rates [related to an obligation the**

1 issuer has issued or will issue] **for one or more related borrowings that:**

2 **“(a) Exist when the agreement for exchange of interest rates is executed;**

3 **“(b) Are reasonably expected to be executed when regularly scheduled payments are due**  
4 **from the issuer under the agreement; or**

5 **“(c) Are identified after the agreement for exchange of interest rates is executed and**  
6 **substituted for a borrowing described in paragraph (a) or (b) of this subsection as a result**  
7 **of prepayment, refunding, conversion, ratings changes, redemption, defeasance or other**  
8 **similar event related to one or more of the borrowings described in paragraph (a) or (b) of**  
9 **this subsection. An agreement may be made to manage payment, interest rate, spread or similar**  
10 **exposure undertaken in connection with [the obligation] a related borrowing upon a finding by the**  
11 **issuer, or the State Treasurer on behalf of a state issuer, that the agreement benefits the issuer.**

12 **“(4) The issuer, or the State Treasurer on behalf of a state issuer, shall include in an agreement**  
13 **for exchange of interest rates provisions related to payment, term, security, collateralization, ter-**  
14 **mination, default and remedy that the issuer, or the State Treasurer on behalf of a state issuer,**  
15 **determines necessary or appropriate upon consideration of the covenants applicable to the [obli-**  
16 **gation] related borrowing and the creditworthiness of the parties.**

17 **“(5) The issuer, or the State Treasurer on behalf of a state issuer, may enter into an agreement**  
18 **for exchange of interest rates only if:**

19 **“(a) The [long-term, senior, unsecured, unenhanced, unsubordinated debt] credit ratings for ob-**  
20 **ligations of the [party, or] counterparty that are similar to the termination payment obli-**  
21 **gations of the counterparty, or the credit ratings for at least one of the guarantors of the**  
22 **[party, with whom the issuer, or the State Treasurer on behalf of a state issuer, enters the agreement**  
23 **are rated] counterparty, are in one of the top three rating categories without gradation by at least**  
24 **two nationally recognized rating agencies and satisfy any other requirements that may be im-**  
25 **posed by the Oregon Municipal Debt Advisory Commission or the State Treasurer, as appli-**  
26 **cable, pursuant to subsection (13) of this section; or**

27 **“(b) The termination payment obligations [of the party, or the guarantors of the party] of the**  
28 **counterparty, or at least one of the guarantors of the counterparty, with whom the issuer, or**  
29 **the State Treasurer on behalf of a state issuer, enters the agreement are collateralized by cash or**  
30 **obligations:**

31 **“(A) That are rated in one of the top three rating categories without gradation by at least two**  
32 **nationally recognized rating agencies [and:] as determined by the Oregon Municipal Debt Advi-**  
33 **sory Commission or the State Treasurer, as applicable, pursuant to subsection (13) of this**  
34 **section;**

35 **“[(A)] (B) [The cash or obligations] That are deposited with the issuer, or the State Treasurer**  
36 **on behalf of a state issuer, or with an agent of the issuer;**

37 **“[(B)] (C) [The cash or obligations] That have a market value sufficient to [fully collateralize**  
38 **the] collateralize that portion of the termination payment obligations of the party under the**  
39 **agreement as determined at the discretion of the issuer, or the State Treasurer on behalf of a state**  
40 **issuer; and**

41 **“[(C)] (D) [The collateral obligations are valued] That are revalued at least quarterly.**

42 **“(6) [With respect to an obligation that the issuer, or the State Treasurer on behalf of a state issuer,**  
43 **has issued or will issue, the] An issuer, or the State Treasurer on behalf of a state issuer, may**  
44 **agree, based on the issuer’s reasonable expectations when the agreement is executed:**

45 **“(a) If the [obligation] borrowing bears interest at one or more variable rates, to pay sums equal**

1 to interest at one or more fixed rates or one or more different variable rates determined under a  
2 formula set forth in the agreement for exchange of interest rates on an amount not to exceed the  
3 outstanding principal amount of the *[obligation]* **borrowing when the agreement is entered into**  
4 **or, if the borrowing has not been issued, the principal amount of the borrowing reasonably**  
5 **anticipated to be outstanding when payments are required to commence under the agree-**  
6 **ment** in exchange for an agreement for the issuer, or the State Treasurer on behalf of a state issuer,  
7 to be paid sums *[equal to interest]* **calculated based** on the same principal amount at a variable rate  
8 determined under a formula set forth in the agreement.

9 “(b) If the *[obligation]* **borrowing** bears interest at one or more fixed rates, to pay sums *[equal*  
10 *to interest at]* **calculated based on** one or more variable rates or one or more different fixed rates  
11 determined under a formula set forth in the agreement for exchange of interest rates on an amount  
12 not to exceed the outstanding principal amount of the *[obligation]* **borrowing when the agreement**  
13 **is entered into or, if the borrowing has not been issued, the principal amount of the bor-**  
14 **rowing reasonably anticipated to be outstanding when payments are required to commence**  
15 **under the agreement** in exchange for an agreement for the issuer, or the State Treasurer on behalf  
16 of a state issuer, to be paid sums *[equal to interest]* **calculated based** on the same principal amount  
17 at a fixed rate or rates set forth in the agreement.

18 “(7) The issuer, or the State Treasurer on behalf of a state issuer, may not enter into an  
19 agreement under this section that:

20 “(a) Has a term that exceeds the original term of the *[obligation]* **related borrowing** for which  
21 the agreement for exchange of interest rates is made or, in the case of an option or a forward  
22 commitment, has a term that exceeds the reasonably expected term of the *[obligation]* **related bor-**  
23 **rowing** for which the agreement is made; or

24 “(b) Is for a purpose other than to manage payment, interest rate, spread or similar exposure  
25 in connection with the *[obligation]* **related borrowing** of the issuer.

26 “(8) The limitation on interest on an obligation in ORS 286.036, or any other similar limitation,  
27 does not apply to *[interest]* **an amount** paid under an agreement for exchange of interest rates en-  
28 tered into under this section.

29 “(9) Upon entering into an agreement for exchange of interest rates under this section and  
30 continuing until the agreement is satisfied, terminated or otherwise no longer in effect, as long as  
31 no payment default has occurred, the issuer, or the State Treasurer on behalf of a state issuer, shall  
32 treat the amount or rate of interest on the *[obligation related to the agreement]* **related borrowing**  
33 as the amount or rate of interest payable after giving effect to the agreement for the purpose of  
34 calculating:

35 “(a) Tax levies, if any, to pay bond debt service; or

36 “(b) Other amounts that are based upon the rate of interest of the *[obligation]* **borrowing**.

37 “(10) Subject to covenants applicable to *[the obligation]* **a related borrowing and the limitation**  
38 **described in subsection (12) of this section**, payments required *[to be made]* under the agreement  
39 by the issuer, or the State Treasurer on behalf of a state issuer, **may**:

40 “(a) **Be treated as interest payments on the related borrowing;**

41 “[*a*] (b) *[May]* Be made from revenues or other moneys committed to or legally available to  
42 pay the *[underlying debt obligation]* **related borrowing**; and

43 “[*b*] (c) *[May]* Rank in an order of priority of payment relative to the payment of the *[under-*  
44 *lying debt obligation]* **related borrowing** as the issuer, or the State Treasurer on behalf of a state  
45 issuer, determines. In connection with entering into an agreement, the issuer, or the State Treasurer

1 on behalf of a state issuer, may enter into an agreement that enhances or supports the credit of the  
2 issuer in the agreement or enhances or supports the liquidity of the agreement.

3 “(11) An agreement entered into under this section:

4 “(a) Is not a debt or other obligation of the [state] issuer for purposes of any limitation upon the  
5 indebtedness of the [state] issuer.

6 “(b) **Is subject only to the limitations of this section and is not subject to other limita-**  
7 **tions applicable to the related borrowing.**

8 “(12) **A termination payment required to be paid by an issuer under an agreement for**  
9 **exchange of interest rates may not be paid from taxes that the issuer may levy that are**  
10 **exempt from the limitations of sections 11 and 11b, Article XI of the Oregon Constitution.**

11 “[12)(a)] (13)(a) The Oregon Municipal Debt Advisory Commission shall promulgate adminis-  
12 trative rules establishing required terms, conditions, annual or periodic reporting requirements and  
13 other requirements for an agreement for exchange of interest rates entered into by an issuer other  
14 than a state issuer **and may impose additional requirements for agreements for exchange of**  
15 **interest rates that are executed by issuers other than a state issuer, if the commission de-**  
16 **termines those requirements are desirable to protect the interests of those issuers or citi-**  
17 **zens of the State of Oregon.**

18 “(b) The State Treasurer may promulgate administrative rules:

19 “(A) Establishing required terms, conditions, annual or periodic reporting requirements and  
20 other requirements for an agreement for exchange of interest rates entered into by a state issuer  
21 acting with the approval of the State Treasurer under subsection (2) of this section;

22 “(B) **Requiring a party to an agreement, the party’s guarantor or the collateral securing**  
23 **the obligation of a party or the party’s guarantor to meet specific credit rating standards**  
24 **or other conditions; or**

25 “(C) **If the State Treasurer determines that conditions and restrictions are necessary or**  
26 **appropriate to protect the interests of issuers, requiring the agreement to contain terms and**  
27 **conditions that are more restrictive than the terms and conditions established in subsection**  
28 **(5) of this section.**

29 “[13)(a)] (14)(a) Before an agreement for exchange of interest rates may be entered into under  
30 this section, the issuer, or the State Treasurer on behalf of a state issuer, shall determine whether:

31 “(A) The agreement for exchange of interest rates is being executed for a permitted purpose and  
32 benefits the issuer; and

33 “(B) The requirements of this section have been met.

34 “(b) In addition to the determinations required under paragraph (a) of this subsection, an issuer  
35 other than a state issuer shall also determine whether the issuer has complied with the requirements  
36 of the administrative rules promulgated by the Oregon Municipal Debt Advisory Commission under  
37 subsection [(12)] (13) of this section.

38 “[14)] (15) An issuer other than a state issuer shall notify the State Treasurer of the execution  
39 by the issuer of an agreement for exchange of interest rates under this section.”.

40 On page 26, after line 28, insert:

41 “**SECTION 31.** ORS 294.381 is amended to read:

42 “294.381. (1) Each municipal corporation that has the power to levy an ad valorem property tax  
43 shall estimate, in the manner provided in this section, the amount of revenues that will be received  
44 in the ensuing year or ensuing budget period through the imposition of taxes upon the taxable  
45 property within the municipal corporation.

1           “(2) Subject to the additional adjustments required under subsection (3) of this section, the es-  
2           timated ad valorem taxes that will be received in the ensuing year or ensuing budget period is the  
3           sum of the following:

4           “(a) The amount derived by multiplying the estimated assessed value for the ensuing year or  
5           each fiscal year of the ensuing budget period of the taxable property within the municipal corpo-  
6           ration, after boundary changes have been filed in final approved form with the county assessor and  
7           the Department of Revenue as provided in ORS 308.225, by whichever of the following is applicable  
8           to the municipal corporation:

9           “(A) The municipal corporation’s permanent rate limit on operating taxes, as defined in ORS  
10          310.202 (7), or such lesser rate as the municipal corporation may determine to use for purposes of  
11          levying such ad valorem taxes; or

12          “(B) The municipal corporation’s statutory rate limit on operating taxes, as defined in ORS  
13          310.202 (10), or such lesser rate as the municipal corporation may determine to use for purposes of  
14          levying such ad valorem taxes.

15          “(b) If the municipal corporation is authorized to levy a local option tax that was authorized  
16          by the electors as a dollar amount, the dollar amount of such local option tax that is authorized to  
17          be levied in the ensuing year or ensuing budget period.

18          “(c) If the municipal corporation is authorized to levy a local option tax that was authorized by  
19          the electors as a tax rate, the amount derived by multiplying the authorized rate of such local option  
20          tax for the ensuing year or ensuing budget period by the estimated assessed value for the ensuing  
21          year or each fiscal year of the ensuing budget period of the taxable property within the municipal  
22          corporation.

23          “(d) *[An amount equal to]* **The municipal corporation’s estimate of the amount required to**  
24          **pay** the principal and interest on *[all bonded indebtedness of the municipal corporation that is due*  
25          *and payable in the ensuing year or ensuing budget period]* **the amounts described in ORS 310.060**  
26          **(2)(d) and (e), divided by the annual average percentage of taxes collected in the county in which**  
27          **the taxable property of the municipal corporation is located. The estimate may include amounts**  
28          **to reimburse the municipal corporation for the payment of principal and interest on exempt**  
29          **bonded indebtedness that the municipal corporation made from other moneys because col-**  
30          **lections of taxes levied for exempt bonded indebtedness were not sufficient to pay that ex-**  
31          **empt bonded indebtedness.**

32          “(3) The sum of the amounts determined under subsection (2)(a), (b) and (c) of this section shall  
33          be reduced by an amount equal to the estimated amount of such taxes that will not be collected as  
34          a result of:

35          “(a) The discounts allowed under ORS 311.505;

36          “(b) The limits imposed under ORS 310.150 (3); and

37          “(c) The failure of taxpayers to pay such taxes in the year for which they are levied.

38          “(4) The estimated ad valorem taxes determined in accordance with subsections (2) and (3) of  
39          this section shall be used by the municipal corporation for purposes of complying with the require-  
40          ments of ORS 310.060 (1).

41          “**SECTION 32.** ORS 295.005 is amended to read:

42          “295.005. As used in ORS 295.005 to 295.165, unless the context requires otherwise:

43          “(1) ‘Certificate of participation’ or ‘certificate’ means a nonnegotiable document issued by a  
44          pool manager to a public official.

45          “(2) ‘Custodian bank’ or ‘custodian’ means the following institutions designated by the depository

1 bank for its own account:

2 “(a) The Federal Reserve Bank designated to serve this state, or any branch of that bank;

3 “(b) The Federal Home Loan Bank designated to serve this state, or any branch of that bank;

4 “(c) Any insured institution or trust company, as those terms are defined in ORS 706.008, that  
5 is authorized to accept deposits or transact trust business in this state, provided, however, that no  
6 insured institution or trust company may be a custodian bank unless it certifies in writing to the  
7 State Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the  
8 Department of Consumer and Business Services. With the approval of the State Treasurer, a depos-  
9 itory bank may be a custodian bank with respect to its own securities; and

10 “(d) The fiscal agency of the State of Oregon, duly appointed and acting as such agency pursu-  
11 ant to ORS 288.010 to 288.110.

12 “(3) ‘Custodian’s receipt’ or ‘receipt’ means a document issued by a custodian bank to a pool  
13 manager describing the securities deposited with it by a depository bank to secure public fund de-  
14 posits.

15 “(4) ‘Depository bank’ or ‘depository’ means any insured institution or trust company, as those  
16 terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and deposits  
17 of which are insured by the National Credit Union Share Insurance Fund, or a federal credit union,  
18 if the institution, trust company or credit union maintains a head office or a branch in this state in  
19 the capacity of an insured institution, trust company, credit union or federal credit union. However,  
20 an insured institution, trust company, credit union or federal credit union is not a depository bank  
21 unless it has:

22 “(a) Certified in writing to the State Treasurer that it will furnish the reports required under  
23 ORS 714.075 to the Director of the Department of Consumer and Business Services; and

24 “(b) Entered into a written agreement with the State Treasurer and a custodian that pledges the  
25 securities deposited by the insured institution, trust company, credit union or federal credit union  
26 with the custodian as collateral for deposits of public funds held by the insured institution, trust  
27 company, credit union or federal credit union. The agreement shall be approved by the board of di-  
28 rectors or loan committee of the insured institution, trust company, credit union or federal credit  
29 union and shall be continuously maintained as a written record of the institution, company, credit  
30 union or federal credit union.

31 “(5) ‘Pool manager’ means:

32 “(a) The State Treasurer;

33 “(b) Any insured institution or trust company, as those terms are defined in ORS 706.008, a  
34 credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the Na-  
35 tional Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company  
36 or credit union is authorized to accept deposits or transact trust business in this state. A depository  
37 bank may not be a pool manager with respect to securities that it deposits with its custodians as  
38 collateral for the security of public fund deposits and an insured institution, trust company, credit  
39 union or federal credit union may not be a pool manager unless it certifies in writing to the State  
40 Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the De-  
41 partment of Consumer and Business Services;

42 “(c) The Federal Reserve Bank designated to serve this state, or any branch of that bank; or

43 “(d) The Federal Home Loan Bank designated to serve this state, or any branch of that bank.

44 “(6) ‘Public funds’ or ‘funds’ means the funds under the control or in the custody of a public  
45 official by virtue of office, other than those that, under law other than ORS 295.005 to 295.165, are:

1       “(a) Deposited for the purpose of paying principal, interest or premium, if any, on bonds, like  
2 [obligations] **borrowings** and related costs or securing [an obligation] **a borrowing** related to an  
3 agreement for exchange of interest rates entered into under ORS 287.025; or

4       “(b) Invested in authorized investments. Funds invested under ORS 293.701 to 293.820 are in-  
5 vested in authorized investments for purposes of this paragraph when the funds are transferred by  
6 the State Treasurer to a third party under the terms of a contract for investment of funds that re-  
7 quires such a transfer.

8       “(7) ‘Security’ or ‘securities’ means:

9       “(a) Obligations of the United States, including those of its agencies and instrumentalities;

10       “(b) Obligations of the International Bank for Reconstruction and Development;

11       “(c) Bonds of any state of the United States (A) that are rated in one of the four highest grades  
12 by a recognized investment service organization that has been engaged regularly and continuously  
13 for a period of not less than 10 years in rating state and municipal bonds or, (B) having once been  
14 so rated are ruled to be eligible securities for the purposes of ORS 295.005 to 295.165,  
15 notwithstanding the loss of such rating;

16       “(d) Bonds of any county, city, school district, port district or other public body in the United  
17 States payable from ad valorem taxes levied generally on substantially all property within the issu-  
18 ing body and that meet the rating requirement or are ruled to be eligible securities as provided in  
19 paragraph (c) of this subsection;

20       “(e) Bonds of any county, city, school district, port district or other public body issued pursuant  
21 to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county  
22 or city within the State of Oregon, if the issuing body has not been in default with respect to the  
23 payment of principal or interest on any of its bonds within the preceding 10 years or during the  
24 period of its existence if that is less than 10 years;

25       “(f) Bond anticipation notes issued, sold or assumed by an authority under ORS 441.560;

26       “(g) One-family to four-family housing mortgage loan notes related to property situated in the  
27 State of Oregon, which are owned by a depository bank, no payment on which is more than 90 days  
28 past due, and which are eligible collateral for loans from the Federal Reserve Bank of San Francisco  
29 under section 10(b) of the Federal Reserve Act and regulations thereunder;

30       “(h) Bonds, notes, letters of credit or other securities or evidence of indebtedness constituting  
31 the direct and general obligation of a federal home loan bank or Federal Reserve bank;

32       “(i) Debt obligations of domestic corporations that are rated in one of the three highest grades  
33 by a recognized investment service organization that has been engaged regularly and continuously  
34 for a period of not less than 10 years in rating corporate debt obligations;

35       “(j) Collateralized mortgage obligations and real estate mortgage investment conduits that are  
36 rated in one of the two highest grades by a recognized investment service organization that has been  
37 engaged regularly and continuously for a period of not less than 10 years in rating corporate debt  
38 obligations; and

39       “(k) One-family to four-family housing mortgages that have been secured by means of a guaran-  
40 tee as to full repayment of principal and interest by an agency of the United States Government,  
41 including the Government National Mortgage Association, the Federal National Mortgage Associ-  
42 ation and the Federal Home Loan Mortgage Corporation.

43       “(8) ‘Public official’ means each officer or employee of this state or any agency, political subdivi-  
44 sion or public or municipal corporation thereof who by law is made the custodian of or has control  
45 of any public funds.

1           “(9) ‘Value’ means the current market value of securities.

2           “**SECTION 33. For limited tax bonded indebtedness issued under ORS 287.052 to 287.074**  
3 **prior to August 9, 2001, to finance pension liabilities, the limited tax bonded indebtedness:**

4           “(1) **Is subject to the limitation on indebtedness in ORS 238.694.**

5           “(2) **Is not subject to the limitation on indebtedness in ORS 287.054.”.**

6           In line 29, delete “31.” and insert “34.”.

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